IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A No.1920-MA of 2017 (O&M)
Date of decision : 20.05.2024

Mirja Usman Baig ....Applicant

Versus

State of Haryana and another ....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Abhimanyu Singh, Advocate
for the applicant.

Mr. Gaurav Bansal, DAG, Haryana.

PANKAJ JAIN, J. (ORAL)

Complainant seeks leave to appeal against the judgment of acquittal passed by JMIC, Mewat whereby the complaint filed by the applicant stands dismissed.

2. Law was set into motion on the complaint made by the complaint against respondent No.2 for offence punishable under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 alleging that he applied for a plot and paid a sum of Rs.1,86,991/- with the accused. Accused in order to pay back the aforesaid amount issued a cheque of Rs.90,000/- bearing No.356098 dated 27th of February, 2015. The same was presented and was returned vide memo dated 2nd of May, 2015 by the bank with the remarks 'payment stopped by the drawer'. The complainant claims

that he served statutory notice through his counsel dated 6th of June, 2015 but the respondent/accused failed to meet the demand raised by the complainant and was thus guilty of offence punishable under Section 138 of the N.I. Act.

3. Trial Court after analyzing whole of the evidence came to the conclusion that the complainant failed to prove the statutory requirements to constitute offence punishable under Section 138 of the N.I. Act as the mandatory notice required to be served under the statute was beyond limitation.

4. Counsel for the applicant submits that the Trial Court erred in ignoring the provision as contained under proviso appended to Section 142(b) of the N.I. Act wherein the cognizance can be taken even on delayed complaint.

5. I have heard counsel for the applicant and have carefully gone through records of the case.

6. In order to appreciate the argument raised, it will be apt to peruse Sections 138 and 142 of the N.I. Act which read as under :

> "**138. Dishonour of cheque for insufficiency, etc., of funds in the account.**—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to

have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 4 [a term which may be extended to two years'], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice; in writing, to the drawer of the cheque, 5 [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt of other liability" means a legally enforceable debt or other liability.

142.Cognizance of offences.— [(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.].

[(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]

7. In order to attract offence punishable under Section 138 of the N.I. Act, the complainant is required to show that a cheque drawn by a person on account maintained by him with the banker for payment of money

in discharge of part or whole of the debt or liability has been returned by the bank unpaid. However, proviso appended to Section 138 of the N.I. Act further provides that in order to apply the provision it is essential that :

> (a) The cheque is presented to a bank within a period of three months from the date on which it is drawn;
> (b) The payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount by giving a notice in writing, to the drawer of the cheque, within 30 days of the receipt of information by him from the bank regarding return of the unpaid cheque; and
> (c) The drawer of such cheque fails to make the payment of the said amount of the money to the payee or to the holder of the cheque within 15 days of the receipt of the said notice.

8. In the absence of any of the aforesaid three conditions, Section 138 cannot be attracted. Section 138 contains no provision for condoning delay in meeting with any of the timelines as contemplated under proviso (a), (b) and (c). Section 142 deals with cognizance of offences and the power provided to the Court under proviso appended to Section 142(b) is only to condone the delay in making the complaint.

9. In view thereof, this Court finds that the plea raised by counsel for the applicant cannot be accepted and the same deserves to be rejected being without merit.

10. Counsel for the applicant does not dispute that there is four days' delay in issuing statutory notice as contemplated under Section 138

proviso (b). As a result thereof, this Court does not find any reason to interfere in the well reasoned judgments passed by the Courts below.

11. Resultantly the instant application seeking leave to appeal is dismissed.

12. Pending application, if any, shall also stand disposed off.

May 20, 2024 **(PANKAJ JAIN)**
Dpr **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes